

accepted but for which they have failed to pay.

\$208,647.00, through interstate and/or foreign commerce, which Defendants have received and credit and delivered to Defendants perishable agricultural commodities in the amount of

B) Plaintiff Del Monte Fresh Produce N.A., Inc. ("Plaintiff Del Monte") sold on

(Code of Federal Regulations promulgated thereunder.

Agricultural Commodities Act of 1930 ("PACA"), as Amended, 7 U.S.C. §499 *et seq.* and the commodities ("produce") in interstate commerce and, as such, are subject to the Perishable commission merchants, dealers, and/or brokers of wholesale quantities of perishable agricultural

A) Defendants Ana Distribution, Inc. and Sung "Sam" G. Kim ("Defendants") are

Findings of Fact and Conclusions of Law:

Order (Doc. No. 23) already in place. The Court heard oral argument of counsel.

Motion for Preliminary Injunction, with notice to all parties and with a Temporary Restraining

This matter came on for hearing before the Court on September 7, 2007, upon Plaintiffs'

PRELIMINARY INJUNCTION

Defendants.

ANA DISTRIBUTION, INC. and
SUNG "SAM" G. KIM

v.

Plaintiffs.

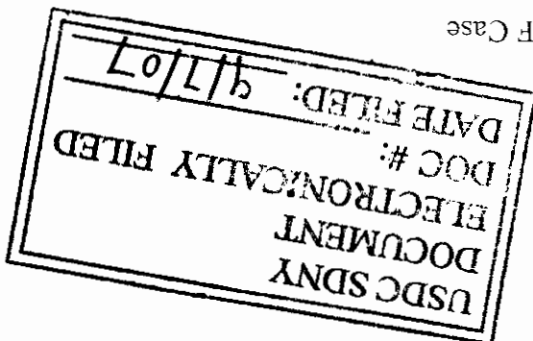
DEL MONTE FRESH PRODUCE N.A., INC.,
PACIFIC FRUIT INC., and GIUMARRA
INTERNATIONAL MARKETING, INC.

CASE NO. 1:07-cv-01887-DC

Consolidated with: 1:07-cv-02555-DC
1:07-cv-04665-DC

JUDGE CHIN

ECF Case



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

trust assets are freely available to pay Plaintiffs. There is also evidence of Defendant Ana

H) Plaintiffs have demonstrated that the trust has not been maintained, as insufficient

is unlawful and in violation of Section 2 of PACA. [7 U.S.C. §499(b).]

act or omission which is inconsistent with this responsibility, including dissipation of trust assets,

obligations to unpaid sellers of perishable agricultural commodities [7 C.F.R. §46.46(d)]. Any

maintain trust assets in a manner such that liquid assets are freely available to satisfy outstanding

G) Commission merchants, dealers, and brokers such as Defendants are required to

is made. [7 U.S.C. §499(e)(c)2]

accounts receivable from the sale of produce in trust for qualified beneficiaries until full payment

which Defendants are required to hold all trust assets including inventory, proceeds, and

F) The trust provisions of PACA establish a statutory, nonsegregated trust under

amount of \$537,284.40. Plaintiffs have also asserted claims for interest and attorneys' fees.

§499(e)(c)4], and accordingly, are perfected PACA trust beneficiaries in the aggregate principal

including the requisite statutory language on the face of their billing invoices [7 U.S.C.

E) Plaintiffs properly preserved and perfected their interests in the PACA trust by

accepted but for which they have failed to pay.

\$172,156.00, through interstate and/or foreign commerce, which Defendants have received and

credit and delivered to Defendants perishable agricultural commodities in the amount of

D) Plaintiff Giunarra International Marketing, Inc. ("Plaintiff Giunarra") sold on

failed to pay.

and/or foreign commerce, which Defendants have received and accepted but for which they have

Defendants perishable agricultural commodities in the amount of \$156,486.40, through interstate

C) Plaintiff Pacific Fruit Inc. ("Plaintiff Pacific Fruit") sold on credit and delivered to

Distribution, Inc.'s business closure which strongly favors entry of a preliminary injunction. As such, Plaintiffs have demonstrated a likelihood of success on the merits and that immediate, irreparable injury and loss has resulted and will continue to result from dissipation of assets subject to the statutory trust established by the PACA, 7 U.S.C. §499(e)(c). See also, *Frio Ice, S.A. v. Sunfruit, Inc.*, 918 F.2d 154 (11th Cir. 1990); *Tanimura & Antle v. Packed Fresh Produce, Inc.*, 222 F.3d 132 (3rd Cir. 2000).

ACCORDINGLY, it is hereby ORDERED that Plaintiffs' Motion for a Preliminary Injunction is GRANTED as follows:

1. Defendants Ana Distribution, Inc. and Sung "Sam" G. Kim ("Defendants") and their officers, agents, servants, employees, assigns, subsidiaries, financial institutions, customers and attorneys, are all hereby restrained from transferring, dissipating, disbursing, liquidating, or encumbering any and all assets now in their possession and/or under their control covered by or subject to the PACA trust, as well as any and all monies and/or assets hereafter received, including but not limited to any and all accounts receivable, security deposits, refunds, inventory, equipment, leasehold interests, real property and/or bank or other accounts which have been funded, financed by, or purchased in whole or in part, directly or indirectly, from the proceeds of Defendants' sale of perishable agricultural commodities.

2. This Preliminary Injunction shall remain in full force and effect until such time as Defendants pay Plaintiffs, through counsel, or deposit for the benefit of Plaintiffs, into the Court's Registry or into a separate interest-bearing escrow account maintained by counsel for one or more Plaintiffs, the amount of \$537,289.40, which sum represents Plaintiffs' aggregate principal claims, at which time this Preliminary Injunction shall dissolve.

statute, it is determined that no bond shall be required.

PACA trust assets, considering Defendants' business closure, and since PACA is a remedial

8. Considering Defendants are in possession of at least \$537,289.40 in Plaintiffs'

to Plaintiffs' counsel, up to the sum of \$537,289.40.

possession, or control of Plaintiffs' PACA trust assets, is hereby ordered to turn over said assets

7. Any third party who receives actual notice of this order and is in receipt,

notice of this order by personal service or otherwise.

attorneys, and upon those persons in active concert or participation with them who receive actual

severally binding upon the parties to this action, their officers, agents, servants, employees and

6. Pursuant to Fed. R. Civ. P. 65(d), this Preliminary Injunction is jointly and

payable, operating expenses, sales, and a list of all known PACA trust creditors.

returns concerning each Defendant's assets, bank accounts, accounts receivable, accounts

from the past twelve (12) months including, but not limited to, records, bank statements and tax

Plaintiffs' counsel with a complete and verified accounting of Defendants' business operations

5. Defendants shall within ~~three (3)~~ **TEN (10)** business days of the date of this Order, provide

such service.

with which such Defendant maintains an account and furnish Plaintiffs' counsel with proof of

a copy of this Order by overnight delivery or facsimile upon any and all financial institutions

4. Each Defendant shall within three (3) business days of the date of this Order serve

promulgated thereunder.

whatsoever which violates 7 U.S.C. §499 *et seq.* and the Code of Federal Regulations

3. Defendants are hereby restrained and enjoined from taking any further action

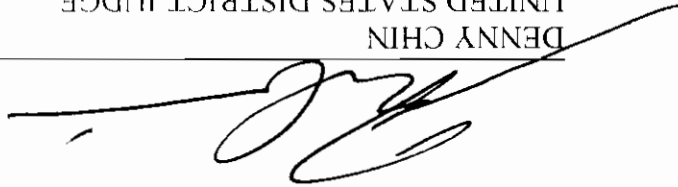
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9. The attorneys for Plaintiffs are hereby authorized and directed to collect all outstanding accounts receivable of Defendants and transfer said collections in the Court's Registry or into a separate interest-bearing escrow account pursuant to paragraph two herein until Plaintiffs receive full payment, and that Defendants are required to fully cooperate with Plaintiffs' attorneys in providing any necessary testimony and/or documents to effect collection. This Preliminary Injunction shall remain in full force and effect until it expires on its own terms pursuant to paragraph two herein or until further Order of this Court.

IT IS SO ORDERED.

Dated: September 7, 2007
New York, New York

DENNY CHIN
UNITED STATES DISTRICT JUDGE



- * 10. This order is without prejudice to the rights of any other legitimate PACA trust creditors which make application to this Court on or before November 7, 2007. Any claims made thereafter shall be time-barred.
11. This order is without prejudice to any application by defendant Kim regarding his personal assets not being subject to the PACA trust.

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